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Paper No.

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**DEC 14 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Hitoshi Shirasaka :  
Application No. 10/759,851 : **DECISION ON PETITION**  
Filed: January 16, 2004 :  
Attorney Docket No. Hokushin-3II :

This is a decision on the PETITION UNDER 37 C.F.R. 1.181 filed November 3, 2004. Applicant requests that the above-identified nonprovisional application be accorded a filing date of January 16, 2004. Further, if the original filing date is granted, then the petition fee of \$130 be refunded.

The petition is **GRANTED**.

The request for refund is **GRANTED**.

Application papers in the above-identified nonprovisional application were deposited on January 16, 2004. However, on October 19, 2004, the Initial Patent Examination Division mailed applicant a "Notice of Incomplete Nonprovisional Application," stating that the application papers deposited January 16, 2004 had not been accorded a filing date because the application was deposited without drawings. (In addition, the Notice required the filing of an executed oath or declaration.)

In response, applicant filed the instant petition. Petitioner states that the drawing indicated (in the specification) is not necessary for the understanding of the subject matter sought to be patented.

**RELEVANT STATUTES AND REGULATIONS**

35 U.S.C. 111(a)(4) provides that:

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

However, as stated in MPEP 601.01(f)

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

In regards to withdrawing the Notice, MPEP § 601.01(f) also states that:

a nonprovisional application having at least one claim ..., directed to subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

And, MPEP § 601.01(g) further provides that:

If the application is filed without all of the drawing figure(s) referred to in the specification, ..., OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers so deposited have been accorded a filing date, but are lacking some of the figures of the drawings described in the specification.

#### DISCUSSION

A review of the application confirms that as filed it contained at least one method claim. Pursuant to § 601.01(f), a drawing is not considered essential for a filing date. Thus, the application is entitled to a filing date without drawings present in the application.

However, as the specification in the instant nonprovisional application contained reference to drawing figure 1 (Brief Description of Drawings, p. 4 of Specification), mailing of a Notice requiring submission of the drawing was appropriate. The Office should have mailed a "Notice of Omitted Items" rather than a "Notice of Incomplete Nonprovisional Application." To the extent that the Notice stated that the instant application is not entitled to a filing date, the "Notice of Incomplete Nonprovisional Application" mailed October 19, 2004, was mailed in error and is hereby **withdrawn**.

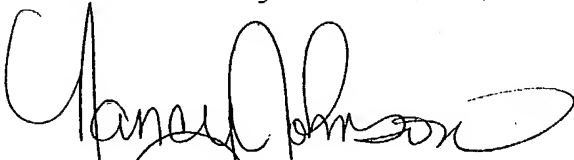
In view thereof, the application as originally deposited without drawings is entitled to a filing date of January 16, 2004.

Given the basis for granting the petition, the petition fee is being refunded by Treasury Check under separate cover.

**CONCLUSION**

The Office of Initial Patent Examination (OIPE) has been advised of this decision. Pursuant to this decision, the application has been referred to OIPE for correction of the filing date to January 16, 2004 and for indication in Office records, as appropriate, that "0" sheets of drawings were present on filing.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions